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PART II—Section 2

Bills and Reports of Select Committees on Bills

HOUSE OF THE PEOPLE

The following Bill was introduced in the House of the People on 1st August, 1952:—

BILL* No. 90 OF 1952

A Bill to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith.

BE it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(*1*) This Act may be called the Forward Contracts (Regulation) Act, 1952.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act, for different States or areas, and for different goods or classes of goods.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "association" means any body of individuals, whether incorporated or not, constituted for the purpose of regulating and controlling the business of the sale or purchase of any goods;

(*b*) "Commission" means the Forward Markets Commission established under section 3;

(*c*) "forward contract" means a contract for the delivery of goods at a future date and which is not a ready delivery contract;

(*d*) "goods" means every kind of movable property other than actionable claims, money and securities;

*The President has, in pursuance of clause (3) of article 117 of the Constitution of India, recommended to the House of the People the consideration of the Bill.

(*e*) "Government security" means a Government security as defined in the Public Debt Act, 1944 (XVIII of 1944);

(*f*) "non-transferable specific delivery contract" means a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bills of lading, warehouse receipt or any other document of title relating thereto are not transferable.

(*g*) "option in goods" means an agreement, by whatever name called, for the purchase or sale of a right to buy or sell, or a right to buy and sell, goods in future, and includes a *teji*, a *mandi*, a *teji-mandi*, a *galli*, a put, a call or a put and call in goods;

(*h*) "prescribed" means prescribed by rules made under this Act;

(*i*) "ready delivery contract" means a contract which provides for the delivery of goods and the payment of price therefor, either immediately or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise;

(*j*) "recognised association" means an association which is for the time being recognised by the Central Government under section 6;

(*k*) "rules" with reference to rules relating in general to the constitution and management of an association, includes in the case of an incorporated association its memorandum and articles of association;

(*l*) "securities" includes shares, scrips, stocks, bonds, debentures, debenture-stocks, or other marketable securities of a like nature in or of any incorporated company or other body corporate and also Government securities;

(*m*) "specific delivery contract" means a forward contract which provides for the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned ;

(*n*) "transferable specific delivery contract" means a specific delivery contract which is not a non-transferable specific delivery contract.

CHAPTER II

THE FORWARD MARKETS COMMISSION

3. Establishment and constitution of the Forward Markets Commission.—(*1*) The Central Government may, by notification in the Official Gazette, establish a Commission to be called the Forward Markets Commission for the purpose of exercising such functions and discharging such duties as may be assigned to the Commission by or under this Act.

(*2*) The Commission shall consist of not less than two but not exceeding three members appointed by the Central Government of whom the Chairman and the Secretary (also to be appointed by the Central Government) shall be full-time members and the third member, if any, full-time or part-time as the Central Government may direct :

Provided that one of the members of the Commission shall be an officer of the Central Government and another a person having knowledge of forward markets in India.

(3) No person shall be qualified for appointment as, or for continuing to be, a member of the Commission if he has, directly or indirectly, any such financial or other interest as is likely to affect prejudicially his functions as a member of the Commission, and every member shall, whenever required by the Central Government so to do, furnish to it such information as it may require for the purpose of securing compliance with the provisions of this sub-section.

(4) No member of the Commission shall hold office for a period of more than three years from the date of his appointment, and a member relinquishing his office on the expiry of his term shall be eligible for reappointment.

(5) The other terms and conditions of service of members of the Commission shall be such as may be prescribed.

4. Functions of the Commission.—The functions of the Commission shall be—

(a) to advise the Central Government in respect of the recognition of, or the withdrawal of recognition from, any association or in respect of any other matter arising out of the administration of this Act ;

(b) to keep forward markets under observation and to draw the attention of the Central Government or of any other prescribed authority to any development taking place in, or in relation to, such markets which, in the opinion of the Commission, is of sufficient importance to deserve the attention of the Central Government and to make recommendations thereon ;

(c) to collect and whenever the Commission thinks it necessary publish information regarding the trading conditions in respect of goods to which any of the provisions of this Act is made applicable, including information regarding supply, demand and prices, and to submit to the Central Government periodical reports on the operation of this Act and on the working of forward markets relating to such goods ;

(d) to make recommendations generally with a view to improving the organisation and working of forward markets ;

(e) to undertake the inspection of the accounts and other documents of any recognised association when directed by the Central Government; and

(f) to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed

CHAPTER III

RECOGNISED ASSOCIATIONS

5. Application for recognition of associations.—(1) Any association concerned with the regulation and control of forward contracts which is desirous of being recognised for the purposes of this Act may make an application in the prescribed manner to the Central Government.

(2) Every application made under sub-section (1) shall be accompanied by a copy of the bye-laws for the regulation and control of forward contracts and also a copy of the rules relating in general to the constitution of the association, and, in particular, to—

(a) the govering body of such association, its constitution and powers of management and the manner in which its business is to be transacted;

(b) the powers and duties of the office bearers of the association ;

(c) the admission into the association of various classes of members, the qualifications of members, and the exclusion, suspension, expulsion and readmission of members therefrom or thereinto ;

(d) the procedure for registration of partnerships as members of the association and the nomination and appointment of authorised representatives and clerks.

6. Grant of recognition to association.—(1) If the Central Government is satisfied, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as may be required, that the rules and bye-laws of the association are suitable in the interest of the trade and are in the public interest, it may grant recognition to the association in such form as may be prescribed.

(2) Before granting recognition under sub-section (1), the Central Government may, by order, direct,—

(a) that there shall be no limitation on the number of members of the association or that there shall be such limitation on the number of members as may be specified;

(b) that the association shall provide for the appointment by the Central Government of a person, whether a member of the association or not, as its representative on, and of not more than three persons representing interests not directly represented through membership of the association as member or members of, the governing body of such association, and may require the association to incorporate in its rules any such direction and the conditions, if any, accompanying it.

(3) No rules of a recognised association shall be amended except with the approval of the Central Government

(4) Every grant of recognition under this section shall be published in the Official Gazette.

7. Withdrawal of recognition.—If the Central Government is of opinion that any recognition granted to an association under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the Central Government may, after giving a reasonable opportunity to the association to be heard in the matter, withdraw, by notification in the Official Gazette, the recognition granted to the said association :

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Central Government may make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date.

8. Power of Central Government to call for periodical returns or direct inquiries to be made.—(1) Every recognised association shall furnish to the Central Government such periodical returns relating to its affairs or the affairs of its members as may be prescribed.

(2) Without prejudice to the provisions contained in sub-section (1), where the Central Government considers it expedient so to do, it may, by order in writing,—

(a) call upon a recognised association to furnish in writing such information or explanation relating to its affairs or the affairs of any of its members as the Central Government may require, or

(b) appoint one or more persons to make an inquiry in relation to the affairs of such association or the affairs of any of its members and submit a report of the result of such inquiry to the Central Government within such time as may be specified in the order or, in the alternative, direct the inquiry to be made, and the report to be submitted, by the governing body of such association acting jointly with one or more representatives of the Central Government; and

(c) direct the Commission to inspect the accounts and other documents of any recognised association and submit its report thereon to the Central Government.

(3) Where an inquiry in relation to the affairs of a recognised association or the affairs of any of its members has been undertaken under sub-section (2)—

(a) every director, manager, secretary or other officer of such association,

(b) every member of such association, and

(c) if the member of the association is a firm, every partner, manager, secretary or other officer of the firm,

shall be bound to produce before the authority making the inquiry, all such books, accounts, correspondence and other documents in his custody or power relating to, or having a bearing on the subject-matter of, such inquiry and also to furnish the authority with any such statement or information relating thereto as may be required of him, within such time as may be specified.

9. Furnishing of annual reports to the Central Government by recognised associations.—(1) Every recognised association shall furnish to the Central Government a copy of its annual report.

(2) Such annual report shall contain such particulars as may be prescribed.

10. Power of Central Government to direct rules to be made or to make rules.—(1) Whenever the Central Government considers it expedient so to do, it may, by order in writing, direct any recognised association to make any rules or to amend any rules made by the recognised association in respect of all or any of the matters specified in sub-section (2) of section 5, other than the matter specified in clause (b) of sub-section (2) of section 6 within a period not exceeding six months from the date of the order.

(2) If any recognised association, against whom an order is issued by the Central Government under sub-section (1), fails or neglects to comply with such order within the period specified in the said sub-section, the Central Government may make the rules or amend the rules made by the recognised association, as the case may be, either in the form specified in the order or with such modification thereof as may be agreed upon between the association and the Central Government.

(3) Where, in pursuance of sub-section (2), any rules have been made or amended, the rules so made or amended shall be published in the Official Gazette and on such publication shall, notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), or any other law for the time being in force, have effect as if they had been made or amended by the recognised association concerned.

11. Power of recognised association to make bye-laws.—(1) Any recognised association may, subject to the previous approval of the Central Government, make bye-laws for the regulation and control of forward contracts.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for—

(a) the opening and closing of markets and the regulation of the hours of trade;

(b) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of, and payment for, goods, the passing on of delivery orders and for the regulation and maintenance of such clearing house;

(c) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;

(d) fixing, altering or postponing days for settlement;

(e) determining and declaring market rates, including opening, closing, highest and lowest rates for goods;

(f) the terms, conditions and incidents of contracts including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contracts in writing;

(g) regulating the entering into, making, performance, rescission and termination of contracts, including contracts between members or between a commission agent and his constituent, or between a broker and his constituent, or between a member of the recognised association and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer and the responsibility of commission agents and brokers who are not parties to such contracts;

(h) the admission and prohibition of specified classes or types of goods or of dealings in goods by a member of the recognised association;

(i) the method and procedure for the settlement of claims or disputes including the settlement thereof by arbitration;

(j) the levy and recovery of fees, fines and penalties;

(k) the regulation of the course of business between parties to contracts in any capacity;

(l) the fixing of a scale of brokerage and other charges;

(m) the making, comparing, settling and closing of bargains;

(n) the regulation of fluctuations in rates and prices;

(o) the emergencies in trade which may arise and the exercise of powers in such emergencies including the power to fix maximum and minimum prices;

(*p*) the regulation of dealings by members for their own account;

(*q*) the limitations on the volume of trade done by any individual member;

(*r*) the obligation of members to supply such information or explanation and to produce such books relating to their business as the governing body may require.

(*3*) The bye-laws made under this section may—

(*a*) specify the bye-laws the contravention of any of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (*2*) of section 15;

(*b*) provide that the contravention of any of the bye-laws shall—

(*i*) render the member concerned liable to fine; or

(*ii*) render the member concerned liable to expulsion or suspension from the recognised association or to any other penalty of a like nature not involving the payment of money.

(*4*) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed, and when approved by the Central Government, shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised association is situate :

Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication, in any case.

12. Power of Central Government to make or amend bye-laws of recognised associations.—(*1*) The Central Government may, either on a request in writing received by it in this behalf from the governing body of a recognised association, or if in its opinion it is expedient so to do, make bye-laws for all or any of the matters specified in section 11 or amend any bye-laws made by such association under that section.

(*2*) Where, in pursuance of this section, any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Official Gazette and also in the Official Gazette of the State in which the principal office of the recognised association is situate, and on such publication the bye-laws so made or amended shall have effect as if they had been made or amended by the recognised association.

(*3*) Notwithstanding anything contained in this section, where the governing body of a recognised association objects to any bye-laws made or amended under this section by the Central Government on its own motion, it may, within six months of the publication thereof under sub-section (*2*), apply to the Central Government for a revision thereof, and the Central Government may, after giving a reasonable opportunity to the governing body of the association to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws so made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published in the Official Gazette.

(4) The making or the amendment or revision of any bye-laws under this section shall in all cases be subject to the condition of previous publication:

Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication.

13. Power of Central Government to supersede governing body of recognised association.—(1) Without prejudice to any other powers vested in the Central Government under this Act, where the Central Government is of opinion that the governing body of any recognised association should be superseded, then notwithstanding anything contained in this Act or in any other law for the time being in force, the Central Government may, and after giving a reasonable opportunity to the governing body of the recognised association concerned to show cause why it should not be superseded, by notification in the Official Gazette, declare the governing body of such association to be superseded for such period not exceeding six months as may be specified in the notification, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and where more persons than one are appointed may appoint one of such persons to be the chairman and another of such persons to be the vice-chairman.

(2) On the publication of a notification in the Official Gazette under sub-section (1), the following consequences shall ensue, namely:—

(a) the members of the governing body which has been superseded shall, as from the date of the notification of supersession, cease to hold office as such members;

(b) the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has been superseded;

(c) all such property of the recognised association as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry out the purposes of this Act, shall vest in such person or persons.

(3) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the association whose governing body is superseded under sub-section (1), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that sub-section, and the Central Government may, from time to time, by like notification vary such period.

(4) On the determination of the period of office of any person or persons appointed under this section the recognised association shall forthwith reconstitute a governing body in accordance with its rules:

Provided that until a governing body is so reconstituted, the person or persons appointed under sub-section (1) shall, notwithstanding anything contained in sub-section (1), continue to exercise and perform their powers and duties.

(5) On the reconstitution of a governing body under sub-section (4), all the property of the recognised association which had vested in, or was in the possession of, the person or persons appointed under sub-section (1) shall vest or revest, as the case may be, in the governing body so reconstituted.

14. Power to suspend business of recognised associations.—If in the interest of the trade or in the public interest the Central Government considers it expedient so to do, it may, by notification in the Official Gazette, direct a recognised association to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification, and may if, in the opinion of the Central Government, the interest of the trade or the public interest so requires by like notification extend the said period from time to time.

CHAPTER IV

FORWARD CONTRACTS AND OPTION IN GOODS

15. Forward contracts in notified goods illegal or void in certain circumstances.—(*1*) The Central Government may, by notification in the Official Gazette, declare this section to apply to such goods or class of goods and in such areas as may be specified in the notification, and thereupon, subject to the provisions contained in section 18, every forward contract for the sale or purchase of any goods specified in the notification which is entered into in the area specified therein otherwise than between members of a recognised association or through or with any such member shall be illegal.

(*2*) Any forward contract in goods entered into in pursuance of sub-section (*1*) which is in contravention of any of the bye-laws specified in this behalf under clause (*a*) of sub-section (*3*) of section 11 shall be void—

(*i*) as respects the rights of any member of the recognised association who has entered into such contract in contravention of any such bye-law, and also

(*ii*) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

(*3*) Nothing in sub-section (*2*) shall affect the right of any person other than a member of the recognised association to enforce any such contract or to recover any sum under or in respect of such contract :

Provided that such person had no knowledge that such transaction was in contravention of any of the bye-laws specified under clause (*a*) of sub-section (*3*) of section 11.

(*4*) No member of a recognised association shall, in respect of any goods specified in the notification under sub-section (*1*), enter into any contract on his own account with any person other than a member of the recognised association, unless he has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he has bought or sold the goods, as the case may be, on his own account :

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure a written confirmation by such person of such consent or authority within three days from the date of such contract :

Provided further that in respect of any outstanding contract entered into by a member with a person other than a member of the recognised association, no consent or authority of such person shall be necessary for closing out in accordance with the bye-laws the outstanding contract, if the member discloses in the note, memorandum or agreement of sale

or purchase in respect of such closing out that he has bought or sold the goods, as the case may be, on his own account.

16. Consequences of notification under section 15.—Where a notification has been issued under section 15, then notwithstanding anything contained in any other law for the time being in force or in any custom, usage or practice of the trade or the terms of any contract or the bye-laws of any association concerned relating to any contract,—

(*a*) every forward contract for the sale or purchase of any goods specified in the notification, entered into before the date of the notification and remaining to be performed after the said date and which is not in conformity with the provisions of section 15, shall be deemed to be closed out at such rate as the Central Government may fix in this behalf, and different rates may be fixed for different classes of such contracts ;

(*b*) all differences arising out of any contract so deemed to be closed out shall be payable on the basis of the rate fixed under clause (*a*) and the seller shall not be bound to give and the buyer shall not be bound to take delivery of the goods.

17. Power to prohibit forward contracts in certain cases.—(*1*) The Central Government may, by notification in the Official Gazette, declare that no person shall, save with the permission of the Central Government, enter into any forward contract for the sale or purchase of any goods or class of goods specified in the notification and to which the provisions of section 15 have not been made applicable, except to the extent and in the manner, if any, as may be specified in the notification.

(*2*) All forward contracts in contravention of the provisions of sub-section (*1*) entered into after the date of publication of the notification thereunder shall be illegal.

(*3*) Where a notification has been issued under sub-section (*1*), the provisions of section 16 shall, in the absence of anything to the contrary in the notification, apply to all forward contracts for the sale or purchase of any goods specified in the notification entered into before the date of the notification and remaining to be performed after the said date as they apply to all forward contracts for the sale or purchase of any goods specified in the notification under section 15.

18. Chapters III and IV to apply to non-transferable specific delivery contracts only in certain cases.—(*1*) Where a notification under section 15 has been issued in respect of any goods or class of goods, the Central Government shall, by a like notification, define the area in which a recognised association may regulate and control non-transferable specific delivery contracts in respect of such goods or class of goods and the provisions of this Chapter and of Chapter III shall apply to non-transferable specific delivery contracts only in such areas and only in respect of such goods or class of goods.

(*2*) Notwithstanding anything contained in sub-section (*1*), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control non-transferable specific delivery contracts in any area to which the provisions of this Chapter and of Chapter III do not apply, it may, by notification in the Official Gazette, declare that all or any of the provisions of the said Chapters shall apply to non-transferable specific delivery contracts in

such area and in respect of such goods or class of goods as may be specified in the notification, and may also specify the manner in which and the extent to which all or any of the said provisions shall so apply.

19. Prohibition of options in goods.—(*1*) Notwithstanding anything contained in this Act or any other law for the time being in force, all options in goods entered into after the date on which this section comes into force shall be illegal.

(*2*) Any option in goods which has been entered into before the date on which this section comes into force and which remains to be performed, whether wholly or in part, after the said date shall to that extent become void.

CHAPTER V

PENALTIES AND PROCEDURE

20. Penalty for contravention of certain provisions of Chapter IV.—(*1*) Any person who enters into any forward contract or any option in goods in contravention of any of the provisions contained in sub-section (*1*) of section 15, section 17 or section 19 shall, on conviction, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(*2*) Any person who enters into any forward contract in contravention of the provisions contained in sub-section (*3*) of section 15 shall, on conviction, be punishable with fine

21. Penalty for owning or keeping place used for entering into forward contracts in goods—Any person who—

(*a*) owns or keeps a place other than that of a recognised association, which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes, or

(*b*) without the permission of the Central Government, organises, or assists in organising, or becomes a member of, any association, other than a recognised association, for the purpose of assisting in, entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act, or

(*c*) manages, controls or assists in keeping any place other than that of a recognised association, which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act or at which such forward contracts are recorded or adjusted, or rights or liabilities arising out of such forward contracts are adjusted, regulated or enforced in any manner whatsoever, or

(*d*) not being a member of a recognised association, wilfully represents to, or induces, any person to believe that he is a member of a recognised association or that forward contracts can be entered into or made or performed, whether wholly or in part, under this Act through him, or

(*e*) not being a member of a recognised association or his agent authorised as such under the rules or bye-laws of such association, canvasses, advertises or touts in any manner, either for himself or

on behalf of any other person, for any business connected with forward contracts in contravention of any of the provisions of this Act, or

(*f*) joins, gathers, or assists in gathering at any place, other than the place of business specified in the bye-laws of a recognised association, any person or persons for making bids or offers or for entering into or making or performing any forward contracts in contravention of any of the provisions of this Act,

shall, on conviction, be punishable with imprisonment which may extend to two years, or with fine, or with both.

22. Offences by companies.—(*1*) Where an offence has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

23. Certain offences to be cognizable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), any offence punishable under sub-section (*1*) of section 20 or section 21 shall be deemed to be a cognizable offence within the meaning of that Code.

24. Jurisdiction to try offences under this Act.—No court inferior to that of a presidency magistrate or a magistrate of the first class shall take cognizance of or try any offence punishable under this Act.

CHAPTER VI

MISCELLANEOUS

25. Advisory Committee.—For the purpose of advising the Central Government in relation to any matter concerning the operation of this Act, the Central Government may establish an advisory committee consisting of such number of persons as may be prescribed.

26. Power to delegate.—The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may, in such circumstances and subject to such conditions, if any, as may be specified, be exercised by such officer or authority, including any State Government or officers or authorities thereof as may be specified in the direction.

27. Power to exempt.—The Central Government may, by notification in the Official Gazette, exempt, subject to such conditions and in such circumstances and in such areas as may be specified in the notification, any contract or class of contracts from the operation of all or any of the provisions of this Act.

28. Power to make rules—(*1*) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the objects of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the terms and conditions of service of members of the Commission;

(*b*) the manner in which applications for recognition may be made under section 5 and the levy of a fee in respect thereof;

(*c*) the manner in which any inquiry for the purpose of recognising any association may be made and the form in which recognition shall be granted;

(*d*) the particulars to be contained in the annual reports of recognised associations ;

(*e*) the manner in which the bye-laws to be made, amended or revised under this Act shall, before being so made, amended or revised, be published for criticism;

(*f*) the constitution of the advisory committee established under section 25, the terms of office of and the manner of filling vacancies among members of the committee; the interval within which meetings of the advisory committee may be held and the procedure to be followed at such meetings, and the matters which may be referred by the Central Government to the advisory committee for advice;

(*g*) any other matter which is to be or may be prescribed.

STATEMENT OF OBJECTS AND REASONS

Forward trading, which normally plays a useful part in tempering price fluctuations, tends in certain situations to exaggerate such fluctuations to the detriment of the interests of producers as well as consumers. During the war and immediately thereafter, the Central Government issued orders under Rule 81 of the Defence of India Rules, prohibiting forward trading in commodities, such as foodgrains, oil-seeds, oil-cakes, vegetable oils, raw cotton, spices, sugar and bullion. After the Defence of India Act lapsed, orders in respect of foodgrains, edible oil-seeds and oils, raw cotton and spices were kept in force under the Essential Supplies (Temporary Powers) Act, 1946, and similar orders about cotton-seed and sugar were also issued later under this Act. It was only in the case of raw cotton that a general exemption was granted with respect to forward trading conducted under the auspices of the East India Cotton Association, Bombay.

Among the States, Bombay is the only one which has adopted a comprehensive scheme for the regulation of forward trading under the Bombay Forward Contracts Control Act. That Act has been brought into force mainly to control forward trading in cotton, bullion and oil-seeds.

Under the Constitution, the subject of "stock exchanges and futures markets" is included in the Union list. Consequently, the State Legislatures are no longer competent to enact any fresh legislation with regard to forward markets, and unless Central legislation on this subject is enacted, the resulting lacuna may prevent desirable action being taken, when needed. When the Central Act comes into force, the existing State Acts will cease to operate to the extent to which they are inconsistent with the Central Act.

In February, 1950, a draft Bill on this subject was circulated to the State Governments, the Reserve Bank of India, Chambers of Commerce and various other interests concerned. In July, 1950, the draft Bill was referred to an Expert Committee under the Chairmanship of Shri A. D. Shroff, and was revised in the light of the Committee's recommendations. The Government of India also accepted in principle the Committee's recommendations in regard to the practical operation of this measure, though their application to individual cases would have to be decided in the light of experience and the circumstances of each case.

A Bill was introduced in the Provisional Parliament on 19th December, 1950, and was referred by it to a Select Committee on 24th April, 1951. The Select Committee's Report, which was submitted on 20th August, 1951, could not be considered by the Provisional Parliament before it was prorogued and the Bill lapsed. This Bill as now introduced is largely in the form recommended by the Select Committee, but certain alterations have been made therein as a result of further consideration.

The Bill provides for the regulation of forward trading and the prohibition of options in goods. Transactions on Stock Exchanges have been excluded, since the problem of regulating Stock Exchanges have some special features of its own and can best be treated separately. It is proposed to prohibit options altogether, since they are considered to be an undesirable form of speculation.

The regulatory provisions of this Act will be extended by notification to different classes of goods and to different areas as and when necessary. The main principle underlying these provisions is that forward contracts should be allowed to be entered into only in accordance with the rules and bye-laws of a recognised association. The rules and by-laws will be subject to the approval of the Central Government who will also have the power to make such rules and bye-laws. Provision has been made for the appointment by the Central Government of one person as its own representative and not more than three persons to represent interests not directly represented through the membership of the association, as members of the governing body of a recognised association. The Central Government will also have the powers to order an inquiry into the affairs of a recognised association or those of any of its members, and to direct the Forward Markets Commission to inspect the accounts and other documents of the Association. In emergencies, the Central Government may have to suspend the business of a recognised association, and in certain extreme cases, to supersede the governing body of a recognised association for a period not exceeding six months, or even to withdraw recognition. It has been provided that the provisions of this Act will apply to non-transferable specific delivery contracts only in certain areas to be notified by the Central Government.

In order to assist the Central Government in the administration of the Act, it is considered desirable that a commission, to be called "The Forward

Markets Commission" should be established. Provision has also been made for the establishment of an Advisory Committee to advise the Central Government on any matter concerning the operation of the Act.

NEW DELHI; T. T. KRISHNAMACHARI.

The 25th July, 1952.

Notes on Clauses

Clause 2.—Forward contracts are of three kinds : futures contracts, transferable specific delivery contracts and non-transferable specific delivery contracts. It will be seen from clause 2 (*c*) read with clause 18 that the scheme of regulation embodied in this Bill applies to all the three types of contracts. Tansferable specific delivery contracts are included within the purview of this Bill, because in many trades such types of contracts can also be used as futures contracts for all practical purposes. Government will have the power, however, under clause 27 to exempt transferable specific delivery contracts, when their inclusion is likely to cause unnecessary hardship or inconvenience to the trade concerned. In regard to non-transferable specific delivery contracts, the regulatory provisions of the Bill will be made applicable only in such areas and only in respect of such goods or class of goods as are notified by the Central Government. Sub-clause (*2*) of clause 18, however, empowers the Central Government to extend the application of the regulatory provisions to non-transferable specific delivery contracts in any area to which they do not apply.

Clauses 3 and 4.—In order to assist the Central Government in the administration of the Act and to provide for a study of the problems relating to forward markets, it is considered desirable that a Commission to be called the "Forward Markets Commission", should be established. The Commission will also assist the Central Government in co-ordinating the action taken and policies pursued by the various authorities to whom the Central Government may have to delegate some of the powers conferred upon it by this Act..

Clauses 5, 6 and 7 provide for the grant of recognition to and withdrawal of recognition from associations concerned with the regulation and control of forward contracts. Recognition will be granted only to a limited number of associations. Before granting recognition, care will be taken to see that the rules of admission do not exclude any section of the trade whose participation is necessary or desirable in the interests of the trade. Provision is also made for securing Government representation on the governing bodies of recognised associations.

Clause 8 empowers the Central Government—

(*a*) to call upon a recognised association to furnish information or explanation regarding its affairs or the affairs of its members ;

(*b*) to order an inquiry into such affairs ; and

(*c*) to direct the Commission to inspect the documents of a recognised association.

Clause 10 gives power to the Central Government to direct any recognised association to make or amend any rules in relation to any matter specified in clause 5 (*2*) other than the matter specified in clause 6 (*2*) (*b*)

Clauses 11 and 12.—Clause 11 specifies matters on which a recognised association may make bye-laws for regulating the activities of its members. Any contract entered into in contravention of certain specified bye-laws will be void. [*See* also clause 15 (2)]. Power is given to the Central Government under clause 12 to amend the bye-laws of a recognised association, wherever necessary.

Clauses 13 and 14 contain necessary powers for the supersession of the governing body of a recognised association, or to suspend the business of a recognised association in emergencies.

Clause 15.—When associations have been recognised under clause 6 in respect of a commodity in any area and clause 15 is brought into force with respect to that commodity in that area, no forward contract will be allowed to be entered into in respect of that commodity in that area except by or through a member of a recognised association. The clause also provides that any forward contract entered into in contravention of the bye-laws of the recognised association shall be void. It has also been provided that the rights of innocent third parties will not be affected by forward contracts entered into in contravention of the bye-laws. A member of a recognised association, while executing a sale or purchase order from a non-member, will be required not to buy or sell on his own account, except with the consent of the non-member. Such consent, however, will not be required when the member has to close out an outstanding contract.

Clause 17 empowers Government to prohibit forward contracts in any commodity to which clause 15 has not been made applicable. Similar powers are contained in the Essential Supplies (Temporary Powers) Act, 1946, but they are limited to the essential commodities specified in that Act. The power to prohibit forward contracts may have to be exercised in the case of commodities in which excessive speculation is found to be taking place, but to which the regulatory provisions of this Act have not yet been applied. Such prohibition will be withdrawn as and when the necessary arrangements are made to regulate forward contracts in the commodity concerned. Where forward trading has to be prohibited even in respect of a commodity to which clause 15 has been made applicable, the necessary action can be taken under clause 14 or clause 7.

Clause 18 provides for application of Chapters III and IV to non-transferable specified delivery contracts. *See* the note on clause 2.

Clause 19 prohibits option in goods. It is considered that options unduly increase the volume of speculation and have a demoralising effect on the market.

Clause 23 makes certain offences under the Act cognizable.

Clause 25 provides for the establishment of an Advisory Committee which will advise the Central Government on any matter concerning the operation of this Act.

Clause 27.—This power is necessary. It was provided in the Forward Contracts (Prohibition) Orders issued under the Defence of India Rules and was utilised to deal with special cases.

FINANCIAL MEMORANDUM

The Forward Contracts (Regulation) Bill contemplates the setting up of a Forward Markets Commission to advise the Central Government in the administration of the proposed Act and to provide for a continuous study of the problems relating to forward markets

2. The Commission is to consist of not less than two but not exceeding three members of whom the Chairman and the Secretary shall be full-time members and the third member, if any, full-time or part-time as may be decided. One of the members will be an officer of the Central Government. Assuming that the Commission consists of three full-time members, of whom one will be the Chairman and the other will function also as Secretary, and that the Commission has a small office, the expenditure involved will be about Rs. 25,000 non-recurring (to set up the office) and about Rs. 1,50,000 per annum recurring.

The following Bill was introduced in the House of the People on 4th August, 1952:—

BILL NO. 91 OF 1952

A Bill further to amend the Administration of Evacuee Property Act, 1950.

BE it enacted by Parliament as follows:—

1. Short title and commencement.—(*1*) This Act may be called the Administration of Evacuee Property (Amendment) Act, 1952.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of section 2, Act XXXI of 1950.—In section 2 of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the principal Act), in clause (*d*),—

(*1*) at the end of sub-clause (*iii*), the word "or" shall be inserted, and after that sub-clause and before the *Explanation* thereto the following clauses shall be inserted, namely:—

"(*iv*) who has, after the 18th day of October, 1949, transferred to Pakistan, without the previous approval of the Custodian, his assets or any part of his assets situated in any part of the territories to which this Act extends; or

(*v*) who has, after the 18th day of October, 1949, acquired, if the acquisition has been made in person, by way of purchase or exchange, or, if the acquisition has been made by or through a member of his family, in any manner whatsoever, any right to, interest in, or benefit from, any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan;";

(*2*) the *Explanation* to sub-clause (*iii*) shall be numbered as *Explanation* I and after that *Explanation* as so numbered, the following further *Explanations* shall be inserted, namely:—

"*Explanation II.*—For the purposes of sub-clause (*iv*), the transfer to Pakistan by any person of any reasonable sum of money in accordance with the rules made in this behalf by the Central Government for the purpose of financing any transaction

in the ordinary course of his trade or for the maintenance of any member of the family of such person shall not be deemed to be a transfer of his assets within the meaning of that sub-clause.

Explanation III.—For the purposes of sub-clause (*v*), the acquisition of any right to, interest in, or benefit from, any such property as is referred to in that sub-clause by a firm, private limited company or trust of which any person is a partner, member or beneficiary, as the case may be, shall be deemed to be an acquisition by that person of such right, interest or benefit within the meaning of that sub-clause.";

(*3*) clause (*e*) shall be omitted;

(*4*) in clause (*f*), for the words beginning with '"evacuee property" means' and ending with the words "to the extent of such right or interest," the following shall be substituted, namely :—

'"evacuee property" means any property of an evacuee (whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity), and includes any property which has been obtained by any person from an evacuee after the 14th day of August, 1947, by any mode of transfer which is not effective by reason of the provisions contained in section 40.'

3. Omission of section 3, Act XXXI of 1950.—Section 3 of the principal Act shall be omitted.

4. Amendment of section 6, Act XXXI of 1950.—In section 6 of the principal Act,—

(*a*) in sub-section (*1*), for the words "The State Government may, in consultation with the Custodian-General" and the words "the State", the words "The Central Government may," and "any State" shall respectively be substituted; and

(*b*) in sub-section (*3*), the words "but the State Government may, by general or special order, provide for the distribution of work among them" shall be omitted.

5. Amendment of section 10, Act XXXI of 1950.—In sub-section (*2*) of section 10 of the principal Act, after clause (*l*) the following clause shall be inserted, namely :—

"(*ll*) in any case where the evacuee property which has vested in the Custodian consists of fifty-one per cent. or more of the shares in a company, the Custodian may take charge of the management of the whole affairs of the company and exercise, in addition to any of the powers vested in him under this Act, all or any of the powers of the directors of the company, notwithstanding that the registered office of such company is situate in any part of the territories to which this Act extends, and notwithstanding anything to the contrary contained in this Act or the Indian Companies Act, 1913 (VII of 1913) or in the articles of association of the company;".

6. Amendment of section 12, Act XXXI of 1950.—In sub-section (*1*) of section 12 of the principal Act, for the words "where such allotment, lease or agreement has been granted or entered into after the 14th day of August, 1947" the following shall be substituted, namely :—

"whether such allotment, lease or agreement was granted or entered into before or after the commencement of this Act."

7. Insertion of new section 12A in Act XXX of 1950.—After section 12 of the principal Act, the following section shall be inserted, namely:—

"12A. *Special provisions with respect to transfer of tenancy rights of evacuees.*—(*1*) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, where tenancy rights have vested in the Custodian as evacuee property and the Custodian has granted a lease in respect of such property, the Custodian may, in any case where the lessor under whom the property was held immediately before it vested in the Custodian is not an evacuee, declare, by general or special order, that with effect from such date as may be specified in the order he shall stand absolved of all responsibilities with respect to the property or the lease granted by him.

(*2*) On the making of any such declaration as is referred to in sub-section (*1*),—

(*a*) the lease granted by the Custodian shall be deemed to have effect as if granted by the lessor under whom the property was held immediately before the Custodian assumed possession or control thereof and shall continue to have such effect until it is determined by lapse of time or by operation of law;

(*b*) all sums realised by the Custodian in respect of the said lease before the date of the declaration referred to in sub-section (*1*) shall, subject to the deduction of fees, if any, payable to the Custodian, become payable to the lessor against whom the lease has now effect.

(*3*) Nothing contained in this section shall—

(*a*) render the Custodian liable to any person for any sum in excess of the sum payable to the lessor under clause (*b*) of sub-section (*2*), or

(*b*) prejudice any rights of the lessor or the lessee, to which he may be entitled under any other law for the time being in force, consistently with the terms and conditions, if any, of the lease granted by the Custodian."

8. Amendment of section 16, Act XXXI of 1950.—In section 16 of the principal Act, for sub-sections (*1*) and (*2*), the following sub-sections shall be substituted, namely:—

"16. *Restoration of evacuee property.*—(*1*) Subject to such rules as may be made in this behalf, the Central Government or any person authorised by it in this behalf may, on application made to it or him by an evacuee or by any person claiming to be the heir of an evacuee, and, on being satisfied that it is expedient or proper so to do, grant to the applicant a certificate stating that any evacuee property, which has vested in the Custodian and to which the applicant would have been entitled if this Act were not in force, shall be restored to him.

(*2*) If the evacuee or, as the case may be, the heir to whom a certificate has been granted under sub-section (*1*) applies to the Custodian in writing for the restoration of the evacuee property which has vested in the Custodian and in respect of which the certificate has been granted, the Custodian shall, on the production by the applicant of the certificate and subject to the other provisions

contained in this section and in any rules that may be made in this behalf, restore the evacuee property to the applicant.

(*2A*) On receipt of an application under sub-section (*2*), the Custodian shall cause public notice thereof to be given in the prescribed manner and after holding a summary inquiry into the claim in such manner as may be prescribed shall—

(*a*) if he is satisfied with respect to the title of the applicant to the property, make a formal order restoring the property to the applicant; or

(*b*) if he is not so satisfied, reject the application; or

(*c*) if he entertains any doubt with request to the title of the applicant to the property, refer him to a civil court for the determination of his title thereto .

Provided that no order for the restoration of any evacuee property shall be made under this section unless provision has been made in the prescribed manner for the recovery of any amount due to the Custodian in respect of the property or the management thereof."

9. Substitution of new section for section 18, Act XXXI of 1950.— For section 18 of the principal Act, the following section shall be substituted and shall be deemed always to have been substituted, namely —

"18 *Occupancy or tenancy rights not to be extinguished.*— Where the rights of an evacuee in any land or in any house or other building consist or consisted of occupancy or tenancy rights, nothing contained in any law for the time being in force or in any contract or in any instrument having the force of law or in any decree or order of any court, shall extinguish or be deemed to have extinguished any such rights either on the tenant becoming an evacuee within the meaning of this Act or at any time thereafter so as to prevent such rights from vesting in the Custodian under the provisions of this Act or to prevent the Custodian from exercising all or any of the powers conferred on him by this Act in respect of any such rights, and, notwithstanding anything contained in any such law, contract, instrument, decree or order, neither the evacuee nor the Custodian, whether as an occupancy tenant or as a tenant for a certain time, monthly or otherwise, of any land, or house or other building shall be liable to be ejected or be deemed to have become so liable on any ground whatsoever for any default of the evacuee or the Custodian."

10. Omission of Chapter IV, Act XXXI of 1950.—Chapter IV of the principal Act shall be omitted

11. Amendment of section 24, Act XXXI of 1950.—In section 24 of the principal Act, in sub-section (*1*),—

(*a*) the word and figures "section 19" shall be omitted ;

(*b*) in the proviso, for the words, brackets and figures "sub-clause (*iii*) of clause (*d*) of section 2, or that the property is not evacuee property within the meaning of sub-clause (*2*) of clause (*f*) of section 2," the following words, brackets and figures shall be substituted, namely, "sub-clause (*iii*) or sub-clause (*iv*) or sub-clause (*v*) of clause (*d*) of section 2."

12. Amendment of section 25, Act XXXI of 1950.—In section 25 of the principal Act, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Any person aggrieved by an order under section 7 declaring his property to be evacuee property on the ground that he is an evacuee within the meaning of sub-clause (*iii*) or sub-clause (*iv*) or sub-clause (*v*) of clause (*d*) of section 2 may prefer an appeal, in such manner and within such time as may be prescribed, to the district judge nominated in this behalf by the State Government."

13. Substitution of new sections for sections 40 and 41 in Act XXXI of 1950.—For sections 40 and 41 of the principal Act, the following sections shall be substituted, namely :—

"40. *Validity of transfers respecting property subsequently declared to be evacuee property.*—(*1*) No transfer made after the 14th day of August, 1947, by or on behalf of any person in any manner whatsoever of any property belonging to him shall be effective so as to confer any rights or remedies in respect of the transfer on the parties thereto or any person claiming under them or either of them, if, at any time after the transfer, the transferor becomes an evacuee within the meaning of section 2 or the property of the transferor is declared or notified to be evacuee property within the meaning of this Act, unless the transfer is confirmed by the Custodian in accordance with the provisions of this Act.

(*2*) Nothing contained in sub-section (*1*) shall apply to the transfer for valuable consideration of any such property as is referred to therein—

(*a*) which has been or is made with the previous approval of the Custodian; or

(*b*) in any case where the transferor has not left India for Pakistan within a period of two years from the date of the transfer:

Provided that in the case of a transfer made before the commencement of the Administration of Evacuee Property (Amendment) Act, 1952, the transferor had not left India for Pakistan before such commencement, notwithstanding that a period of two years had already elapsed before such commencement; or

(*c*) made after the commencement of the Administration of Evacuee Property (Amendment) Act, 1952, in any case where the value of the property so transferred is less than five thousand rupees:

Provided that the transferor does not transfer any other property belonging to him within a period of one year from the date of the transfer

(*3*) An application under sub-section (*1*) for the confirmation of any transfer may be made by the transferor or the transferee or any person claiming under, or lawfully authorised by, either of them to the Custodian within two months from the date of the transfer or within two months from the date of the declaration or notification referred to in sub-section (*1*) whichever is later, and the provisions of section 5 of the Indian Limitation Act, 1908 (IX of 1908) shall apply to any such application.

(4) Where an application under sub-section (3) has been made to the Custodian for confirmation, he shall hold an inquiry in respect thereof in the prescribed manner and may reject the application if he is of opinion that—

(a) the transaction has not been entered into in good faith or for valuable consideration; or

(b) the transaction is prohibited under any law for the time being in force; or

(c) the transaction ought not to be confirmed for any other reason.

(5) Where, in respect of any transfer made before the commencement of the Administration of Evacuee Property (Amendment) Act, 1952, the Custodian has rejected any application for confirmation thereof solely on the ground—

(a) that although the transaction was entered into in good faith, the consideration paid was not adequate, or

(b) that the application was barred by limitation,

then, notwithstanding anything to the contrary contained in any law or contract or decree or order of a civil court or other authority, but subject to any rules that may be made by the Central Government in this behalf, the Custodian may exercise any of the following powers in respect of the transfer, namely:—

(i) confirm the transfer, if the transferee agrees to pay to the custodian the difference in value between the value of the property as assessed by the Custodian and the amount actually paid by the transferee to the transferor;

(ii) if the transferee agrees, take possession of such part of the property as, after dividing it by metes and bounds, is equivalent in value to the difference between the value of the property as assessed by the Custodian and the amount actually paid by the transferee to the transferor;

(iii) if the transferee agrees, take possession of the entire property by paying off to the transferee the amount which the Custodian finds as having been actually paid by the transferee to the transferor as consideration for the transfer; or

(iv) if the transferee does not agree to any of the courses referred to in clauses (i) to (iii) inclusive, auction the property and take over such part of the sale proceeds as is equivalent to the difference in value of the property as assessed by him and the amount actually paid by the transferee to the transferor, the surplus being paid to the transferee:

Provided that in the case of any transfer falling within clause (b) of this sub-section, the powers conferred on the Custodian by this section shall not be exercised unless the Custodian finds that the transaction has been entered into in good faith but the consideration paid is not adequate.

(6) If the application is not rejected under sub-section (4), the Custodian may confirm the transfer either unconditionally or on such terms and conditions as he may think fit to impose.

(7) For the removal of doubts, it is hereby declared that every property transferred in contravention of the provisions of this section which does not confer any rights or remedies in relation to the transfer on the parties thereto shall be deemed to be property declared to be evacuee property within the meaning of sub-section (1) of section 7 and to have vested in the Custodian in accordance with the provisions of section 8.

41. *Transactions relating to evacuee property void in certain circumstances.*—Subject to the other provisions contained in this Act, every transaction entered into by any person in respect of property declared or deemed to be declared to be evacuee property within the meaning of this Act, shall be void unless entered into by or with the previous approval of the Custodian."

14. Substitution of new section for section 52, Act XXXI of 1950.—For section 52 of the principal Act, the following section shall be substituted, namely:—

"52. *Power to exempt.*—The Central Government may, by notification in the Official Gazette, declare that all or any of the provisions of this Act or of the rules made thereunder shall not apply, or shall be deemed never to have applied, or shall cease to apply, or shall apply only with such modifications or subject to such conditions, restrictions or limitations as may be specified in the notification, to or in relation to any class of persons or class of property."

15. Amendment of section 56, Act XXXI of 1950.—In section 56 of the principal Act,—

(1) in sub-section (2),—

(a) after clause (b), the following clause shall be inserted, namely:—

"(bb) the transfer by the Custodian of any case pending before any officer subordinate to him or the withdrawal to himself for disposal of any case so pending or the exercise of any similar powers by the Custodian General in respect of cases pending before any officer subordinate to him;",

(b) for clause (q), the following clause shall be substituted, namely:—

"(q) the manner in which applications for the previous approval of the Custodian may be made under section 40 and the matters which he shall take into account in granting such approval, and the nature of cases and the circumstances in which the Custodian may confirm or refuse to confirm a transfer under that section;";

(2) in sub-section (3),—

(a) the brackets, figure and words "(3) The State Government may, by notification in the Official Gazette, make rules providing for all or any of the following matters, namely:—" shall be omitted, and

(b) clauses (a), (b), (c), (d) and (e) shall be relettered as clauses (t), (u), (v), (w) and (x) respectively.

STATEMENT OF OBJECTS AND REASONS

The Bill is designed to incorporate in the Administration of Evacuee Property Act, 1950 (XXXI of 1950), certain changes that are considered necessary on account of the changed circumstances since the legislation was originally enacted. Provisions relating to "intending evacuees" in the Act are no longer considered necessary and they are accordingly being deleted. Certain difficulties which are being experienced by a section of the population in disposing of their property on account of the existing provisions of the Act are also sought to be removed by means of amendments to sections 40 and 41 of the Act Opportunity has also been taken to incorporate certain other changes which are considered necessary in the light of the experience of the working of the Act.

AJIT PRASAD JAIN.

NEW DELHI;
The 22nd July, 1952.

The following report of the Joint Committee on the Bill further to amend the Preventive Detention Act, 1950, was presented to the House of the People on 30th July, 1952:—

Members of the Joint Committee

House of the People

Shri M. Ananthasayanam Ayyangar—*Chairman*.
Shri Halaharvi Sitarama Reddy.
Shri Balvantray Gopaljee Mehta.
Shri Narendra P. Nathwani.
Shri Ganesh Sadashiv Altekar.
Shri Hari Vinayak Pataskar.
Shri B. Shiva Rao.
Shri A. M. Thomas.
Pandit Algu Rai Shastri.
Shri Venkatesh Narayan Tivary.
Shri Tribhuan Narayan Singh.
Shri Feroz Gandhi.
Shri Narahar Vishnu Gadgil.
Shri Kotha Raghuramaiah.
Pandit Lakshmi Kanta Maitra.
Shri Syed Ahmed.
Shri A. K. Basu.
Shri S. V. Ramaswamy.
Shri Dev Kanta Borooah.
Shri Jaipal Singh.
Shri Jaswant Raj.
Dr. Kailas Nath Katju.
Shri Hukam Singh.

Dr. A. Krishnaswami.
Shri N. C. Chatterjee.
Shri Sarangadhar Das.
Shri K. A. Damodara Menon.
Shri A. K. Gopalan.
Shri Shankar Shantaram More.
Dr. Panjabrao S. Deshmukh.

Council of States

Diwan Chaman Lal.
Pandit Sitacharan Dube.
Shri R. C. Gupta.
Shri Bhalchandra Maheshwar Gupte.
Shri K. S. Hegde.
Shri Jaisukh Lal Hathi.
Pandit Hirday Nath Kunzru.
Shri P. S. Rajagopal Naidu.
Shri K. P. Madhavan Nair.
Acharya Narendra Deva.
Shri Osman Sobhani.
Shri P. Sundarayya.

Report of the Joint Committee

The Joint Committee to which the Bill further to amend the Preventive Detention Act, 1950, was referred have considered the Bill, and I now submit this their Report with the Bill as amended by the Committee annexed thereto.

2 The procedure followed by the Joint Committee in the consideration of the Bill was to consider in the first instance the provisions contained in the several clauses of the amending Bill and any further amendments directly arising out of such provisions and thereafter to consider any further amendments which may be proposed to the parent Act.

3. Upon the changes made in the Bill, the Joint Committee note as follows:—

Clause 4.—The words limiting the particulars to be furnished by the officer under sub-section (3) of section 3 to such particulars as have a bearing on the necessity for the order have been omitted so that the officer concerned would be required to furnish to the State Government all particulars which in his opinion have a bearing on the matter. The Joint Committee have also reduced the period within which the approval of a State Government should be obtained from fifteen days to twelve days.

Clause 6.—This new amendment is being inserted to ensure that the disclosure to the detenu of the grounds of the order is made not later than five days from the date of the detention.

Clause 7.—This is a new clause The Joint Committee feel that there should be a Chairman for every Advisory Board who should be a person who is or has been a Judge of a High Court and provision has been made

accordingly. It is also provided that in the case of a Part C State, the Judge of the High Court of a Part A or a Part B State may be appointed as Chairman with the approval of the State Government concerned. Incidentally, the proviso to sub-section (2) of section 8 is being omitted as spent.

Clause 8 (New).—The Joint Committee have reduced the period within which a reference to the Advisory Board has to be made from six weeks to thirty days and have omitted clause (a) of sub-section (2) of section 9 as spent. The whole of section 8 has been re-drafted accordingly.

Clause 9.—The further amendments proposed are consequential upon the amendments to sections 9 and 10(1).

Clause 10.—The Joint Committee think that the new section 12A may be more appropriately numbered as section 11A.

Clause 11.—The Joint Committee have completely recast sub-section (2) of section 13 so as to make it clear that a fresh detention order can be passed against a person only on the basis of fresh facts arising after the date of the revocation or expiry of the last detention order.

4. The Bill was published in Part II, Section 2 of the *Gazette of India* dated the 19th July, 1952.

5. The Committee think that the Bill has not been so altered as to require circulation, and they recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR.
Chairman of the Joint Committee.

NEW DELHI;
The 30th July, 1952.

Note

The Preventive Detention (Second Amendment) Bill 1952 has been most carefully examined in the Joint Select Committee with a double objective namely to see first of all whether the continuance of this extraordinary piece of legislation is necessary and if so for what period, and in the second place what safeguards can be incorporated in order to avoid both hardship and injustice.

Under British rule, during the leadership of Pandit Motilal Nehru, similar legislation was opposed by the Swarajya Party on the basis firstly that the foreign Government ruling our country had no sanction of the people behind it and secondly it was, keeping the principles of non-violence as enunciated by Mahatma Gandhi, in view, the bounden duty of all of us to do whatever lay in our power by legitimate means to subvert the alien government ruling over us.

Now it cannot be said today that the Government of the day or the various State Governments have no sanction behind them. These Governments are the creation of the peoples' will, and therefore any attempt to subvert such Governments is no longer a patriotic duty as in the days before the achievement of independence, but on the contrary an act of treason and disloyalty to the nation. Further there are political groups

active in the country which no longer believe in the creed of non-violence and whose declared policy appears to be to do whatever lies in their power to subvert the Peoples' Governments established under the law of the land.

In such a case, therefore, it has become necessary however abhorrent and extraordinary the legislation may be, to prevent individuals and groups from acting in a manner prejudicial to the maintenance of law and order, or to the maintenance of Essential Supplies and Services required by the nation or to the continued existence of the Constitution adopted by the nation. It is necessary, of course, that due safeguards should be adopted to see that the maximum protection is given to an individual against whom action is taken. For this purpose it has been made possible, if the person so desires, for him to appear in person before the Advisory Board, and challenge the material put before him and argue his case. This is an important advance on the previous position. Further no longer will the Officer ordering the arrest be capable of holding back any relevant material from the Government whether favourable to the detenue or otherwise, since all such relevant material which in his opinion bears upon the matter must be placed before the Government concerned. Finally no longer will it be possible for a fresh order to issue against the detenue unless it is based on fresh material.

In my opinion the working of this measure should be carefully watched and the measure amended in the light of experience gained during the next twelve months.

D. CHAMAN LALL.

NEW DELHI;

The 30th July, 1952.

Minutes of Dissent

I

We are unable to assent to the majority Report of the Joint Select Committee as we are convinced that the refusal by the majority to amend any section or any part of the Principal Act (Act No. IV of 1950) is a grave mistake and is bound to create unfavourable impression in the country. All lovers of liberty and upholders of 'rule of law' will regret that detention without trial and without the essential attributes of a fair hearing is to be continued in Free India.

2. When the Prime Minister responded to the appeal of the Opposition, he announced in the House of the People that the Select Committee should go thoroughly not only into the Bill but also into the principal Act.

3. Accordingly instructions were given by the House to the Select Committee on the basis of Sardar Hukam Singh's suggestion that the Select Committee should consider all amendments even to those sections of the principal Act of 1950 which were not sought to be amended by the present Bill sponsored by the Home Minister.

4. We regret to say that we are disappointed. We expected that the Committee would approach the consideration of the entire measure with an open mind and would permit modification of the much criticised and retrograde features of the principal Act. But not one of the amendments suggested by the Members of the Opposition to the principal Act was accepted. We should record that even the sober and reasoned recommendations of the All-India Civil Liberties Council with regard to affording

full information to the detenu, providing facilities for legal assistance, calling of evidence and the modification of section 3 of the principal statute as to "prejudicial" acts so as to make impossible the use of the Act as against political parties were all turned down by the Committee.

5. We pressed hard that at least in peace time the preventive detention law in India should not be more drastic than what the analogous law was in England during war time. Surely it is not too much to ask that India should today pay at least as much respect to preserve liberty in peace time as England did in war. We put forward suggestions that the power of detention should not be left to the unfettered discretion of an executive or police officer, but should be consigned to the satisfaction of a responsible member of the Cabinet, *viz.*, the Home Minister as was provided in Regulation 18B of the Defence of the Realm Regulation, 1939. But we regret to say that the majority turned down this proposal.

6. We made our position clear on the floor of the House that we did not accept the principle of the Bill and were not committed to anything. We were, however, prepared to consider the desirability of extending the Preventive Detention Act with suitable amendments, provided the Honourable the Home Minister gave us facts and figures to justify the continuance of this measure which is repugnant to the principles of democracy and the fundamental postulates of justice. We regret to say that we got no facts and figures. We were supplied by the Honourable Minister with a statement showing the number of persons released on the advice of the Advisory Boards and the number of detentions upheld by the said Boards and the number of releases ordered by the Government *suo motu* during the period from 22nd February 1951 to 31st May 1952. During this period the Advisory Boards ordered the release of 1241 detenus. The Advisory Boards upheld the detention of 3206 persons. Out of this the Government ordered the released *suo motu* of 1889 persons. Thus 1319 persons were kept under detention at the end of the said period The very fact that about 30 per cent. of the persons ordered to be detained were released by the Advisory Boards in spite of the unsatisfactory procedure and lack of opportunity of fair hearing, shows that the principal Act deserved drastic amendment so as to eliminate the possibility of innocent persons being deprived of their liberty on the mere information of informers on whose report the executive or the police officers have to take action under section 3 of the Preventive Detention Act.

7. The principal points on which we should draw the attention of the Parliament and should recommend that suitable modifications or amendments of the Act and the Bill should be effected are as follows:—

(*1*) *Legal Aid.*—The three essentials for a proper functioning of an investigating body or tribunal are (a) that full information concerning the facts and circumstances in which the detenu has been ordered to be detained should be made available to him; (b) that the detenu should be allowed to appear in person or by legal practitioner of his choice to put forward his defence, and (c) that he be allowed to call evidence and cross-examine witnesses.

None of these pre-requisites of a fair and free enquiry are provided by the Preventive Detention Act as sought to be amended by the present Bill All these conditions were satisfied to an appreciable extent under the procedure adopted by the Advisory Committee in England.

We recognise that the prohibition of personal attendance has been relaxed but the ban on legal assistance is still maintained. It is wholly unsustainable and should be removed.

We cannot possibly subscribe to the amazing doctrine propounded that the detenus can put up their defence properly before the Advisory Board which will be in effect a quasi-judicial tribunal. From our experience we note that for the majority of detenus it is not possible to put their cases properly before the court, and the Supreme Court and the High Courts had often to provide counsel to argue the cases *amicus curiae*. In England competent persons have pointed out that the majority of the detenus are quite incapable of presenting their own cases. In India having regard to the standard of literacy and the lack of training it is impossible for the detenus to present their own cases before the Advisory Boards. Mr. C. K. Allen in his well-known work on 'Law and Orders' states as follows:—

> "Speaking from considerable experience of the examination of conscientious objectors, the present writer can say without hesitation that legal aid may make all the difference to that large class of persons who are inarticulate or discursive and quite unable to present their own cases; and this must be so however eminent, experienced or sympathetic the examining tribunal may be."

The English practice will be seen from the statements of responsible ministers in the British House of Commons. "The Advisory Committee have before them all the evidence which is in the possession of the Secretary of State. But the Advisory Committee call in any person who, in their opinion, may be able to assist in elucidating the matter with which the Committee have to deal".—Home Secretary (October, 31, 1939) "Witnesses can be called, and are called in many of these cases"—Home Secretary (July 23, 1941).

(2) *Composition of the Advisory Board.*—We pressed for the amendment of the Act so that the Advisory Board shall consist of a sitting Judge of the High Court who shall be the Chairman of the said Board. But even this recommendation was not accepted and a person who is a Judge or had been a Judge of a High Court is going to be appointed as Chairman of the Board.

(3) *Family Allowance.*—We pressed very strongly for the grant of family allowance to the detenus. It is the barest minimum justice which the State depriving a person of liberty merely on suspicion can render to him. Detenus have been detained without trial and kept behind the prison bars for months and years and it is only fair that such allowance should be paid to the members of their families who are dependent on him for their subsistence. Even under Regulation III of 1818 family allowance was provided. There was good deal of criticism when leading members of the Congress were detained under Preventive Detention statutes or regulations and adequate family allowances were not granted. Our national Government should not imitate the practice of the imperialist rulers.

(4) *Operation and extent of the Act.*—We put forward amendments suggesting that the Act should be extended only to such areas as would require the application of the Act. Such a drastic statute need not

apply to the whole of India and if any particular area or State wants such drastic powers for dealing with an emergency then it should be applied to that State and that area. Even this suggestion was turned down.

(5) *Restriction of the scope of prejudicial acts.*—We wanted that the very vague expression "public order" which is a term of widest amplitude should be deleted. This will eliminate the possibility of abuse of the statute. We also desired the deletion of "the relations with foreign powers" because this may be used as a handle for checking justifiable criticism of India's policy towards certain foreign States. But our suggestions were negatived.

(6) *Placing of material before the Advisory Board.*—We earnestly pressed an amendment so that all materials available to the Government should be placed before the Advisory Board and the same should also be made available also to the detenu so that the person who has been deprived of his liberty should have a fair chance of proving his innocence. The withholding of information considered by the detaining authority against the public interest to disclose the same is unknown in any country. The Chief Justice of the Bombay High Court in one case deprecated the way grounds were furnished to the detenus:—

> "In all the matters which have come up before us, we have been distressed to find how vague and unsatisfactory the grounds are which the detaining authority furnishes to the detenu; and we are compelled to say that in almost every case we have felt that the grounds could have been ampler and fuller without any detriment to public interest."

8. We consider the following amendments to the principal Act as incorporating the essential safeguards against the possible abuse of the statute:—

Section 1.—Short Title, extent and duration.—Sub-section (2): The Act should not be made applicable to the whole of India all at once. It should be applied to such States or parts or areas which in the opinion of the Central Government require having regard to the special conditions prevailing therein the application of such an extraordinary measure.

Sub-section (3): The duration of the Act should in no case extend beyond one year from the 1st October 1952 and the Parliament must have an opportunity of reviewing the whole position in the country next year, to decide whether really any emergency exists to justify the prolongation of this measure.

Section 3.—Power to make orders detaining certain persons.—We suggest that this section should be substantially altered to restrict the scope of possible abuse and to curtail the ambit of power of the executive or the police officers concerned to order detention.

We suggest the deletion of the words "the relations of India with foreign powers" in item (i) of sub-clause (a) of sub-section (1) of section 8.

We also suggest the deletion of the words "or the maintenance of public order" in item (ii) of sub-clause (a) of sub-section (1) of section 8.

We propose the substitution of the following sub-section in place of present sub-section (2):—

"(2) The power conferred by sub-section (1) of section 3 shall be exercised by the Minister for Home Affairs of the Central Government or by the Home Minister of a State Government or, in a State where there is no ministry, by an officer of the State Government specially authorised in that behalf;

Provided that the Minister passing an order of detention has reasonable cause to believe that the person against whom the said order is going to be passed has been recently concerned in acts prejudicial to matters mentioned in sub-clauses (i), (ii) and (iii) of clause (a) of sub-section (1) aforesaid or in the preparation or instigation of such acts and by reason thereof it is necessary to exercise control over him."

Section 4.—Power to regulate place and condition of detention.—In clause (a) we propose the insertion of "family allowance" after the word "maintenance".

Section 7.—Grounds of detention to be disclosed to persons affected by the order.

We suggest the deletion of sub-section (2).

It is not fair to keep back any relevant facts from the detenu. Otherwise, the right to make representation to the Advisory Board will be rendered ineffective or nugatory.

Section 8.—Constitution of Advisory Boards.—We propose that the section should be altered as follows:—

For sub-section (2) of section 8, the following shall be substituted namely:—

A. "(2) Every such Board shall consist of

(*a*) A Judge of a High Court who shall be the Chairman of the said Board; and

(*b*) Two other persons who have been or are qualified to be appointed as Judges of the High Court."

B. After sub-section (2) of Section 8 *add*:—

"(3) The Judge of the High Court who shall act as Chairman of the Board as aforesaid shall be appointed by the Chief Justice of the High Court concerned and the other persons shall be appointed by the Central Government or the State Government as the case may be."

Section 9.—Reference to Advisory Boards.—In section 9— after the words "the grounds on which the order has been made" *add* "and all the materials in the possession of the said Government on which the order of detention has been made."

Nothing should be kept back from the Advisory Board.

Section 10.—Procedure of Advisory Boards.

We strongly recommend that the detenu should not only be given a chance of appearance before the Advisory Board but he should in all cases be given the right to have his case represented by a lawyer.

9. We also recommend that the detenu and his lawyer shall be permitted to call evidence and to cross-examine witnesses.

N. C. CHATTERJEE
SARANGADHAR DAS
S. S. MORE
JASWANT RAJ MEHTA
A. KRISHNASWAMI
HUKAM SINGH

NEW DELHI;
The 30th July, 1952.

II

We are generally in agreement with the minute of dissent signed by Shri N. C. Chatterji, Shri S. S. More and other colleagues. We wish, however, to make the following supplementary observations on this important matter:—

(1) We are opposed to the underlying principle of the amending Bill as it is repugnant to the right of freedom and inviolability of the individual guaranteed to all citizens of the state. Freedom of person is a valuable right cherished by all freedom-loving persons, and every democratic and progressive constitution ensures the personal liberty of the subject. In Britain and the U.S.A. liberty of person is restricted or withheld only when an emergency has been declared. Preventive Detention in these two countries has been authorised only when war is imminent or hostilities have actually broken out *i.e.*, only when there is a clear threat to national security. In these countries it is always a war time measure. Unfortunately our constitution has more or less followed the retrograde Government of India Act, 1935, and therefore in those Articles of the Constitution which deal with fundamental rights, has tried to restrict and limit them at the same time.

(2) The Preventive Detention Act is a peace time measure and the life of the Act is sought to be extended for another two years although there has been admittedly a marked improvement in the situation.

(3) One of the objectives of the Act is also the suppression of the goondas and black-marketeers. But the ordinary law of the land should be enough to meet the menace of these classes. The existing law could be made more stringent and drastic. Nobody has ever heard of a preventive detention act being enacted to meet such a menace. With the exception of one or two states, the position of law and order is quite normal and there is no interference on any appreciable scale with the supplies of commodities which are essential

for the life of the community. In Britain an Emergency Powers Act was passed in 1920 to secure commodities which are essential for the life of the community. In order that the Act should be put into operation it was necessary that His Majesty should issue a proclamation of emergency. The proclamation remained in force for a month only. Regulations that were framed in pursuance of the Act provided for trials by courts of summary jurisdiction and the maximum sentence awarded was three months only. It is therefore evident that at least in this matter the Government are not guided by wholesome British practice and precedent and are enacting an obnoxious measure which, without sufficient cause and justification constitutes an undue interference with personal liberty of the subject.

(4) It is also significant that some of the safeguards which were considered essential in Britain and the U.S.A. in the interest of personal liberty of the subject even in war time are not being provided in the present Bill for the protection of the detenu even when it is a peace time measure. It is not enough that the Government should advise the detenue of the specific grounds for his detention, but should also give him notice of such further facts presented to the Advisory Board. The detenu should also be given sufficient opportunity to prepare his defence, and if he feels it is necessary that he should be allowed to consult a counsel of his choice in the preparation and defence of his case, he should be permitted to do so. The detenu should also have the right to produce witnesses and submit such documentary evidence as may be considered relevant to his defence. The American Emergency Detention Act however goes much further. It is the Attorney General who issues the warrant; the person arrested is brought before a preliminary hearing officer, who is to issue a detention order if he finds that probable cause for detention exists. The accused is given opportunity to consult counsel, allowed to present evidence in his own behalf and permitted to cross-examine his accusers. There is only one exception and it is that the Attorney General is not required to furnish information the revelation of which would disclose the identity of the informant. If it is not in public interest that a certian fact be disclosed, we do not insist that such a fact be furnished to the detenu, but all other material facts which are supplied to the Advisory Board should be given to the detenu without disclosing the source of information. In the U.S.A. there has to be also a Detention Review Board which reviews the detention order passed by the preliminary hearing officer and in such a case the Attorney General must supply to the detenu all particulars including the identity of informants, subject of course to the national security proviso. The detenu has also got the right to seek a judicial review of an order of the Board confirming detention.

(5) The present Bill, however, does not take sufficient care to protect the rights of the citizen as against the State. It is

eminently desirable that increased protection should be provided to the individual specially when the situation is not abnormal and is continuously improving instead of deteriorating. In the absence of such safeguards the danger is that innocent persons may be deprived of their personal liberty and at the same time be left without any substantial relief against the officers who are responsible for their arrest and detention.

(6) Again it is stated in the Bill that the maximum period of detention shall be twelve months from the date on which the order of detention has been confirmed. The maximum period within which the Advisory Board may submit its report to the appropriate Government is ten weeks and some more time will elapse before the confirmation takes place. It is, therefore, recommended that the maximum period shall be counted from the date of arrest and not from the date of confirmation of the detention order and shall not exceed 6 months.

(7) The Government has been given the right to issue a fresh order of arrest and detention against the same person after release, on the basis of fresh facts and in view of this additional power it is quite unnecessary to keep a person in detention for a very long period.

(8) In our opinion the life of the Act shall not be extended beyond one year.

NARENDRA DEVA

SARANGADHAR DAS

K. A. DAMODARA MENON

NEW DELHI;

The 30th July, 1952.

III

We the undersigned are forced to submit this note of dissent from the majority report, to the Parliament on the Preventive Detention Bill referred to the Joint Select Committee.

We do hold that the very principle of detention without trial is abhorrent to the canons of civilised democratic administration. Yet, Detention Acts have been a regular feature throughout the Congress Administration, for the last five years. Thousands of citizens are put under detention, some for more than 3 or 4 years, during the last five years. The Government is not satisfied with the ample powers provided to it under Criminal Procedure Code, Indian Penal Code, Criminal Law Act and such other measures. It has become the habit of the Government to bypass the Courts and resort to Preventive Detention. As such when for the first time, this black Act comes before the elected Parliament, for a further lease of life, it is only proper that the representatives of the people must be very reluctant to agree to such a measure unless there are sufficient grounds for enacting such an Act.

We do hold that the situation in India does not warrant any extension of the Preventive Detention Act. There is no internal disturbance worth mentioning, nor the situation is such that it can be remotely said that there is a threat to the security of India or any part of it or even to the maintenance of public order and maintenance of essential supplies and services. Ordinary demands of the people for radical agrarian reforms, for living wage and security of jobs, for food and shelter, instead of being tackled by measures that would be beneficial to the vast masses of the Indian people, are being met by the repressive measures and by resorting to Preventive Detention. The only conclusion that can be drawn, is that the Government is arming itself with this power of detention to preserve and safeguard the landlord and big monopoly interests in the country and to suppress the peoples' genuine interests.

In the Joint Select Committee, we have moved amendments to restrict the scope and duration of this Black Preventive Detention Act and also amendments that would have afforded some protection to the detenu from the tender mercies of the Governmental machinery, but none of these have been accepted.

Preventive Detention only in Emergency

1. We do hold that the Preventive Detention Act should come into force only when the President of Indian Republic proclaims an emergency under Article 352 of the Constitution in whole of India or any part of it, as he may by notification declare from time to time.

Even a modest amendment that the Preventive Detention Act must be applied only when the Government declares any area a disturbed area was not acceptable to the majority which only goes to show that the Government instead of relying on ordinary process of law, wants to continue its policy of relying on Preventive Detention.

Not satisfaction of the Officer but sufficient proof must exist for detention.

2. To prevent the abuse of Preventive Detention Act, we suggested that there should be sufficient proofs in the hands of the Government that the person concerned is going to commit overt acts, before it can pass a detention order.

The majority refused to accept this. They held mere satisfaction of the Officer concerned as sufficient. They even rejected another amendment that the detention order must be passed only if the officer concerned is satisfied on the basis of reasonable evidence in his possession. Their whole anxiety is, not to allow, this arbitrary detention from being questioned by the Courts of the Land. When the Government is given powers to detain a person on certain grounds, it is but proper that the Courts be empowered to look into the matter whether the grounds adduced by the Government are sufficient to detain a person. This is not debarring the Government from detaining persons without trial but once these powers are granted the right of Courts to look into the grounds of detention, is only a safeguard to see that the Government does not misuse those powers.

Grounds of detention:

3 The grounds for which detention can be ordered should be sufficiently grave and as such that they cannot be dealt with under the ordinary laws of the land. Yet our amendments to omit as grounds of detention the

maintenance of public order, or the maintenance of essential supplies and services were rejected. It is a well known fact that Preventive Detention was extensively used to throttle public agitation for redressal of genuine grievances under the plea of maintenance of public order. Similarly many a Trade Unionist were arrested and detained only because they were organising workers and get their grievances removed (redressed) or leading working class strike struggles. The Government's plea has always been that they are interfering with the *maintenance of essential* supplies and services. Under the head of essential services, every conceivable branch of working class has been brought.

That is why we do hold that the Preventive Detention Act should not be applicable for the so-called maintenance of Public Order or for the so-called maintenance of essential supplies and services. These can be governed by ordinary process of law.

Anything prejudicial to the relations of India with foreign powers is a ground for Preventive Detention in the present Act. It is too sweeping a power in the hands of the Government. Any sustained criticism or continued agitation exposing the policies in its relations with the Governments of foreign powers or exposure of foreign powers doings in our country could be brought under the mischief of this Act. The majority refused to omit this from the grounds of detention.

Who is authorised to detain?

4. The Act provides that even District Magistrates and Commissioners of Police are authorised to order detention. Detention itself is an evil act. And when the power is given to any District Magistrate, it becomes much more dangerous. There is nothing in the Act which enables a detenue to sue the officials who maliciously detain persons. Our amendment to the effect has been rejected. We are opposed to clothing the District Magistrates with this power of detention, and make detention an easy thing. Let the order of detention be passed under the signature of the Minister in charge of the port-folio and not any District Magistrate or any Office Secretary of the respective Government.

The Magistrate is merely asked to supply the detenues with grounds of detention, as soon as possible, not later than five days after arrest to enable him to make representation to the Government. If there is material already enough on the basis of which the Magistrate concerned is satisfied that the detention in that particular case is necessary, what makes it impossible for him to supply these grounds and particulars to the detenues forthwith or within 24 hours, so as to enable the detenue sufficient time to make his representations before the Government before it passes the confirmation order?

The Magistrate is asked to send "all other particulars, as *in his opinion* have a bearing on the matter". Why should the Magistrate be left the right to choose what the particulars are that have bearing on the matter? We do hold that all particulars having a bearing on the matter be submitted to the appropriate Government. The time before which the appropriate government should pass the Order of confirmation can well be reduced to ten days instead of twelve days.

Preventive Detention should not be made punitive detention:

5. A person is not tried. He is detained at the mere satisfaction of an officer. He has been denied the protection of the Courts. Every man should be presumed innocent till he is convicted through the due process

of law, is given the go-by. Yet a detenue is treated as a criminal. In many a province he is given the rations given for convicted persons, forced to work like an ordinary convict, humiliated and handcuffed and roped, the persons whom he can interview are to be agreed to by the police and in many a case his nearest relatives are denied interviews. Newspapers and books are restricted or even totally denied. They are given as a privilege and not as a right of detenue. Paying of family allowance is not obligatory on the Government and thousands of detenue families are left to starve The detenue is far removed from his usual place of residence to another corner of the State. They can even be removed from one province to another. This makes it impossible for his family people to come and see him.

We hold that the Parliament must enact rules fixing the conditions of detention, place and amenities to the detenues. It must lay down that a detenue's family must be paid an allowance for the period of detention. In fact a detenue must be allowed all the rights which a citizen outside the jail gates enjoy except for the confinement to prevent him from doing things which the government claim to be prejudicial.

6. We do hold that non-compliance to obey a detention order should not be considered as an offence, when you are not prepared to bring persons to trial in the courts of law the case of the Government is to be deemed as hopeless and the person concerned is to be presumed as innocent of crime. As such, he is not bound to obey an illegal order. And not complying with an illegal order can never be a crime. But the Government wants it to be treated as an offence and propose to confiscate the property of the person concerned, thus starving the family for no crime of them. This savours of nothing but that of theory of hostages or that story of lamb and the wolf.

We do hold that neither his property be confiscated nor he be tried for the so-called crime of not complying with the notification to surrender himself to detention. Even our amendment that the sentence should not exceed three months or a fine not exceeding Rs. 250 is also rejected by the majority in the Committee.

The Composition and Authority of Advisory Boards:

7. When proper Courts are not allowed to prove into the Government's orders of detention, the Advisory Boards at least must be enabled to go through the cases properly.

(a) Our suggestion that Advisory Boards must consist only of High Court Judges is rejected. Our contention is that retired High Court Judges or those who are qualified to be appointed as High Court Judges are open to abuse and to other influences because they may expect promotions or other jobs from the Government.

(b) Our suggestion that Advisory Boards be furnished with all the particulars concerning the case referred to it, is rejected, on the ground that the Advisory Board can ask for further material and the Government is bound to give it. Why should the Government wait till the Advisory Board demands and waste the time of the Board and keep the detenue remain in jail longer?

(c) Our suggestion that whatever material was placed before the Advisory Board be made available to the detenue was also rejected. We consider it highly objectionable that certain material to be placed before

the Advisory Board on the basis of which it is influenced, while the detenu cannot disabuse the minds of members of the Advisory Board of these allegations levelled against him by challenging the veracity of these allegations.

(d) Our suggestion that the detenu be allowed to have the right to be represented by a lawyer before the Advisory Board was also rejected. There were thousands of cases where the detenus could not by themselves represent their cases. And it will be only proper that he be given the help he requires.

Similarly, our suggestion that the detenu be given the opportunity to produce evidence to rebut the allegations levelled against him is rejected.

The argument of the majority is that then it becomes a trial held *in camera* instead of Open trial. Secret trials are bad enough. But even to deny it is much worse. Further, how could it become a trial *in camera*, when the evidence act and the ordinary laws are not applied, but only the detenu is allowed to produce informally that evidence to rebut allegations levelled against him.

When the Government wants to detain a person for a period of 15 months, it is but just that he be enabled to represent his case and rebut the allegations with evidonce before the Advisory Board, at least informally and *in camera*.

(e) Our suggestion that the Advisory Board should submit its report within 2 months of the date of detention or within a month of the matter being referred to it is rejected.

(f) Our suggestion that the Advisory Board should review the case after a period of three months after its last report is also rejected.

We could understand the Government's reluctance to allow any evidence being adduced or its refusal for periodical review, if the period of detention is limited to 6 months, *i.e.*, 3 months more than it is entitled to detain a person, under the Constitution, without referring to an Advisory Board. But when it wants to keep the detenu for a period of 15 months, it is but proper that it allows his case for detention be reviewed every three months by the Advisory Board and allow the detenu to produce evidence against the allegation levelled.

The Maximum Period of Detention:

8. (a) We do hold that no person should be detained for more than three months under any conditions, if the object of the Government is only to prevent him from doing any overt act prejudicial to the Government etc... By that time the Government can bring him to trial before the Courts of the land. If it cannot, then it must release him.

An amendment that the maximum period of detention should not exceed six months was also rejected by the majority in the Committee.

(b) Another amendment that the period be calculated from the date of detention and not from the confirmation date after the Advisory Board Report, even that was rejected. By rejecting this amendment, the maximum period of detention is made 15 months. Why does the Government quibble with the words? Why does it not openly say that the maximum period of detention is 15 months from the date of detention and not 12 months?

(c) For those who are already in detention even though they might have been already in detention for more than 2 or 3 years, they still have to rot in detention till 1st April, 1953. All our efforts to persuade the Minister concerned and the majority in the Committee to accept our suggestion to release the detenus who have been in detention for more than a year was of no avail. Our amendment to reduce that term to 1st January, 1953 at least, is equally rejected.

9. We hold that the period of two years imprisonment prescribed in the Act for a detenue on parole for failure of surrendering is too high. When the period of detention itself is fifteen months, to prescribe two years for a detenue who has to serve most probably another six months looks fantastic. It need not in any case be more than what is prescribed for a person who fails to surrender when called to do so after the detention order is served.

The right of the Parliament to review the working of the Act:

10. An amendment was moved that every six months the Government must place before the Parliament specifying the number of detenues, classifying the grounds on which they are detained, *i.e.*, under which subsection of Section III, 1(a). What was the decision of the Advisory Board on such detentions.

This was rejected on the grounds that it was waste of time of the Parliament to go into these matters too often. The same argument was advanced to reject an amendment restricting the life of the Act till December, 1953. This is strange and dangerous argument. We do feel that the Parliament must demand the six monthly report on the working of the Preventive Detention Act.

11. (a) We do hold that the Preventive Detention Act must not be applicable to members of the Parliament and members of State Legislatures. This violates the immunity of Peoples' Representatives. The Government should not be allowed to detain without prior sanction of the Parliament or State Legislature. This is the practice in France, and in a number of other countries. This is necessary in our country too.

(b) Another suggestion that was put forth that members of Parliament or of State Legislatures even if they are detained, must be allowed facilities to attend the sessions of the Parliament or State Legislatures was also rejected.

(c) Similarly, another amendment, that the Legislature or Parliament shall inquire into the propriety of the detention order served on a Parliament member was also rejected.

This will only undermine the faith of the people in the Parliament, if they see that their representatives can be arrested without trial and detained.

12. We hold that in no case this Black Act should be on the Statute Book beyond the 31st December, 1953.

CONCLUSION: We hold that this Black Act of Preventive Detention is not only not necessary, but dangerous to the Democratic life of our people. We recommend that the Bill be dropped or in case the Government persists, it must be modified on the lines suggested above.

If the Government persists, and is not prepared even to modify it on the lines suggested above the only conclusion that will be drawn by the wider sections of our people is that Government unable to solve the agrarian problem, unable to feed and shelter our people, unable to find employment and guarantee a living wage to our workers, unable to rehabilitate millions of refugees, wants to resort to rule by Preventive Detention.

There cannot be a democratic life or administration with a Democle's Sword of Preventive Detention hanging over the head of the people and of the democratic parties.

P. SUNDARAYYA.

A. K GOPALAN.

NEW DELHI,

The 30th July, 1952.

IV

The Preventive Detention Act which came into force in February, 1950, has been on the Statute Book for about 2½ years In view of the seriousness of depriving a person of his freedom without trial both the Act and the amending Bill brought forward last year by the Government to improve it in certain respects were subjected to a great deal of criticism in the Provisional Parliament. It was, therefore, necessary that the Government in order to assure Parliament that the powers conferred by the Act on the executive were not being misused should have asked the Chairmen of the Advisory Boards of some of those states where it has been largely used to appear before the Select Committee to give information about the manner in which the Act was being used and the Boards were functioning. It is very regrettable that Government gave no thought to this important question before the Select Committee met. It was suggested in the Select Committee that some of the Chairmen of the Boards referred to above should be invited to meet the Committee but the suggestion was unfortunately turned down by the Committee. The Committee, therefore, discussed the Bill without any accurate information of the working of the Act.

The most important amendments considered by the Committee related to the extension of the life of the Act and its scope and the facilities given to the detenue to meet the charges against him. But with one exception all the amendments were rejected by the Committee.

The Preventive Detention Act when passed in 1950 was to be in force for a year only. It was continued for a year more by the amending act passed in 1951. As this law is of an exceptional character it is necessary that the position should be reviewed every year so that the Act may not remain in force for a day longer than is necessary. For this reason I do not agree with the proposal in the Bill that the Act should continue till the 31st December, 1954.

Section 3 of the Act allows the authorities to detain a person if they are satisfied that it is necessary to do so "with a view to preventing him from acting in any manner prejudicial to the Defence of India, the relations of India with foreign powers or the security of India". It seems to me highly undesirable to use this power to detain a person because of his

criticism of Indian foreign policy. Even though it may be quite unfair it is far better to place the correct facts before the public than to deal with the unjustifiable criticism in this way

The Bill gives the detenu the right which he did not previously enjoy to appear in person before the Advisory Board. This amendment is satisfactory so far as it goes but it may not be sufficient to enable him to represent his case properly to the Board. The procedure followed in England during the last war under the Emergency Powers (Defence) Act was much fairer to the detenu than the procedure laid down in our Preventive Detention Act. The well-known Regulation 18B which authorised the detention of certain categories of persons without trial laid down that the Chairman of an Advisory Committee should inform the detenu of the grounds of detention and "furnish him with such particulars as are in the opinion of the Chairman sufficient to enable him to present his case". Apart from this the detenu could be allowed to have the assistance of a lawyer in preparing his reply. The Home Secretary stated in the House of Commons on the 28th January, 1943 that the general practice would be to allow British subjects detained under this Regulation to have consultations with their legal advisers out of the hearing of an officer. The detenu could also be allowed to call witnesses. I am strongly of the opinion that the facilities that were allowed to the detenu in England during the war should be allowed to him in India in peace time.

H. N. KUNZRU.

NEW DELHI,

The 30th July, 1952.

(AS AMENDED BY THE JOINT COMMITTEE)

(*Words sidelined or underlined indicate the amendments suggested by the Joint Committee; asterisks indicate the omissions*).

BILL NO. 84 OF 1952

A Bill further to amend the Preventive Detention Act, 1950.

BE it enacted by Parliament as follows :—

1. Short title and commencement.—(*1*) This Act may be called the Preventive Detention (Second Amendment) Act, 1952.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of section 1, Act IV of 1950 —In sub-section (*3*) of section 1 of the Preventive Detention Act, 1950 (hereinafter referred to as the principal Act), for the words and figures "1st day of October, 1952" the words and figures "31st day of December, 1954" shall be substituted.

3. Amendment of section 2, Act IV of 1950.—In section 2 of the principal Act, in clause (*a*), for the words "Chief Commissioner" the words "Lieutenant-Governor or, as the case may be, the Chief Commissioner" shall be substituted.

4. Amendment of section 3, Act IV of 1950.—In section 3 of the principal Act,—

(*i*) in sub-section (*3*), for the words "have a bearing on the necessity for the order", the following words shall be substituted, namely:—

"have a bearing on the matter, and no such order made after the commencement of the Preventive Detention (Second Amendment) Act, 1952, shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government.";

(*ii*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) When any order is made or approved by the State Government under this section, the State Government shall, as soon as may be, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as in the opinion of the State Government have a bearing on the necessity for the order."

5. Amendment of section 6, Act IV of 1950.—Section 6 of the principal Act shall be re-numbered as sub-section (*1*) thereof, and after that sub-section as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), every offence under clause (*b*) of sub-section (*1*) shall be cognizable."

6. Amendment of section 7, Act IV of 1950.—In sub-section (*1*) of section 7 of the principal Act, for the words "as soon as may be", the words "as soon as may be, but not later than five days from the date of detention" shall be substituted.

7. Amendment of section 8, Act IV of 1950.—In section 8 of the principal Act,—

(*a*) in sub-section (*2*), the proviso shall be omitted;

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) The appropriate Government shall appoint one of the members of the Advisory Board who is or has been a Judge of a High Court to be its Chairman, and in the case of a Part C State the appointment to the Advisory Board, of any person who is a Judge of the High Court of a Part A State or a Part B State shall be with the previous approval of the State Government concerned:

Provided that nothing in this sub-section shall affect the power of any Advisory Board constituted before the commencement of the Preventive Detention (Second Amendment) Act, 1952, to dispose of any reference under section 9 pending before it at such commencement."

8. Substitution of new section for section 9, Act IV of 1950.—For section 9 of the principal Act, the following section shall be substituted, namely:—

"*9. Reference to Advisory Boards.*—In every case where a detention order has been made under this Act, the appropriate Government shall, within thirty days from the date of detention under the order, place before the Advisory Board constituted by it under section 8 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer, also the report by such officer under sub-section (*3*) of section 3."

9. Amendment of section 10, Act IV of 1950.—In * * * section 10 of the principal Act,—

(*a*) in sub-section (1)—

(*i*) for the words "if in any particular case it considers it essential", the words "if in any particular case it considers it essential so to do or if the person concerned desires to be heard" shall be substituted;

(*ii*) for the words "from the date specified in sub-section (*2*) of section 9" the words "from the date of detention" shall be substituted;

(*b*) in sub-section (*3*), the words "to attend in person or" shall be omitted, and for the words "legal representative" the words, "legal practitioner" shall be substituted.

10. Insertion of new section 11A in Act IV of 1950.—After section 11 of the principal Act, the following section shall be inserted, namely:—

"*11A. Maximum period of detention.*—(*1*) The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 11 shall be twelve months from the date on which the said order has been so confirmed.

(*2*) Notwithstanding anything contained in sub-section (*1*), every detention order which has been confirmed under section 11 before the commencement of the Preventive Detention (Second Amendment) Act, 1952, shall, unless a shorter period is specified in the order, continue to remain in force until the 1st day of April, 1953, or until the expiration of twelve months from the date on which it was confirmed under section 11, whichever period of detention expires later.

(*3*) The provisions of sub-section (*2*) shall have effect notwithstanding anything to the contrary contained in section 3 of the Preventive Detention (Amendment) Act, 1952 (XXXIV of 1952), but nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time."

11. Amendment of section 13, Act IV of 1950.—For sub-section (*2*) of section 13 of the principal Act, the following sub-section shall be substituted, namely:—

"(*2*) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made."

M. N KAUL,
Secretary.

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